MULTIMEDIA UNIVERSITY

STUDENT IDENTIFICATION NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2018/2019

BBL3614 – COMPANY LAW AND SECRETARIAL PRACTICE

22 October 2018
9 AM – 12 PM
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. This Question paper consists of 4 pages with 4 Questions only.

2. Answer **ALL** questions. All questions carry equal marks and the distribution of the marks for each question is given.

3. Please write all your answers in the Answer Booklet provided.

QUESTION 1 (25 MARKS)

(a) Distinguish between a company limited by shares and a company limited by guarantee.

(5 Marks)

(b) Eastern Bhd is a mining company, whose main business consists of open case mining. It has Articles of Association and the board of Directors includes Emilia, Mike and Brandon.

At a recent meeting, the directors considered an offer from Land Bhd. to see land adjoining one of Eastern Bhd's mining sites for RM5,500,000. The board of Eastern Bhd decided that the company should not accept the offer as it doubted whether it could raise the finance needed to buy the land. Emilia then formed her own company, Eton Sdn. Bhd., which purchased the land for RM55,000. At the same meeting, the directors discussed a proposed contract with Geo Sdn Bhd., which is being considered to survey a plot of land recently purchased by Eastern Bhd. Mike owns 10% of the shares in Geo Sdn. Bhd., but did not reveal his interest at the board meeting.

Brandon has an arrangement with Driller Sdn. Bhd. whereas he receives a 10% commission for all orders placed with it by Eastern Bhd. Six months ago, Eastern Bhd. purchased some drilling equipment from Driller Sdn. Bhd. for RM100,000 for which Brandon was paid RM10,000 commission.

The shareholders of Eastern Bhd have discovered these facts, and they have passed an ordinary resolution directing the board of directors to commence legal proceedings against Emilia, Mike, and Brandon. Discuss the legal issues arising out of the above facts.

(20 Marks)

QUESTION 2 (25 MARKS)

(a) Susan is considering investing in Alpha Bhd. She obtains a copy of Alpha's last Annual Report which contains unqualified financial statements. After reading the Annual Report carefully she decides, on the basis of the figures shown in the Report, to invest in Alpha. Shortly afterwards, it is disclosed that the auditor's negligence resulted in the company's profits being seriously overstated in the Annual Report. Immediately afterwards, Alpha's share price plummets to less than half what Susan paid for them. If Susan had known the true figures she would not have invested in Alpha at all. Advise Susan whether she has any prospect of suing the auditor for her loss.

(10 Marks)

Continued...

(b) The company NPD Sdn Bhd. was successful but no dividends were paid to its members for the last two years. Alan, Basil and Cherry are directors and shareholders of the company.

Alan is unemployed and he is in financial constraint to look after his family. He approaches Basil and Cherry and asks them to consider whether NPD could begin to pay dividends again to its members. Basil and Cherry refuse to consider Alan's request. Alan is upset and announces that he wants to sell his shares. Basil and Cherry refuse to buy and asks him to resign as a director.

The Article of the company provides that (i) no director can be removed without his or her prior consent and (ii) any shareholder who wishes to sell his shares must first offer them to the directors.

Basil and Cherry made all the business decisions in advance and out voted Alan at all the directors' meetings. Alan initially complained but has now lost interest and ceased attending meetings. Recently Basil and Cherry have voted to remove Alan as a director at a general meeting and also have voted to distribute the profits by increasing the directors' salaries to RM3,000,000 per annum.

Advise Alan and discuss whether or not NPD Sdn. Bhd. has been run in a manner that is unfairly prejudicial.

(15 Marks)

QUESTION 3 (25 MARKS)

(a) Explain the differences between the appointment and power of a liquidator as compared to receiver.

(10 Marks)

(b) Hamid and Mazli are the only shareholders and directors of Bahcan Sdn. Bhd., a company duly registered under the Companies Act 2016 dealing with the manufacturing of glass. The company was incorporated in 2017 and the latest audit statement shows that the liabilities of the company exceed its assets and that the company is unable to pay debts owed to various suppliers in the sum of RM2 million. About two months ago, a cheque of RM900, 000 in favour of a creditor, Cambok Bhd., was returned and marked 'Refer to Drawer'. In addition to the above, the company's major asset, a factory in Shah Alam, was burnt down to ashes in a fire caused by an electrical fault. The factory was not insured and all the workers had been terminated from service. Cambok Bhd would like to institute an action for compulsory winding up of the company.

Advise Cambok Bhd on the procedure for compulsory winding up.

(10 Marks)

Continued...

(c) The court in *Panorama Developments (Gilford) Bhd v Fidelis Furnishing Fabrics Bhd* (1971) said that the secretary is the chief administrator of the company and thus has ostensible authority to bind the company.

Discuss the circumstances that disqualify a person from acting as a company secretary as provided in the Companies Act 2016.

(5 Marks)

QUESTION 4 (25 MARKS)

You are the company secretary for Molisto Sdn Bhd, a newly incorporated company situated in Bukit Beruang which deals with transportation business. The Board has requested you to advise the directors on the following:

(a) Duties of company secretary in managing board meeting.

(8 Marks)

(b) Duties of company secretary in annual general meeting.

(8 Marks)

(c) Roles of the company secretary in corporate governance.

(9 Marks)

End of Paper